FILED
MAR 5 1942
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

No. 951

STANDARD OIL COMPANY OF NEW JERSEY,
Petitioner,

against

OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

WILLIAM L. STANDARD,
Counsel for Respondents.

LOUIS H. RUBINSTEIN,
of Counsel.

INDEX

PAGE

Statement 1

Facts 2

Legal Points 5

A. A consideration of the nature of Section 4527 of the Revised Statutes (46 U. S. C. A. 594) 4

B. Revised Statutes, Section 4527 (46 U. S. C. A. 594) and Revised Statutes, Section 4582 (46 U. S. C. A. 684) are not mutually exclusive, nor is the latter section applicable to this case 7

C. Transporting the men back to New York by rail or bus was not a performance of the contract of employment 13

D. Conclusion, Certiorari should not be allowed 16

TABLE OF CASES.

Arwine v. Alaska S.S. Co., 65 P. (2d) 695, 189 Wash. 437 (1937) 5

Calvin v. Huntley, 178 Mass. 29, 59 N. E. 435 (1901) 6

Emerson v. Havland, Fed. Cas. No. 4441 9

Heynsohn v. Merriman, 1 Fed. 728 (S. D. N. Y., 1890) 9

Hill v. Sachen, 59 Fed. 790 (S. D., N. Y., 1894) 14

Johnson v. Standard Oil Co. of N. J., 1940 A. M. C. 1145 (D. C. Maryland) 14

Maryland Distilling, Inc., 3 N. L. R. B. 176 (1937) ... 12

N. L. R. B. v. Hearst, et al., 102 F. (2d) 658 (C. C. A. 3d, 1940) 12

N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615 (1937) 12

PAGE

Pool v. Welsh, Fed. Cas. No. 11269 (D. C., Pa., 1830) 9

Shermacher v. Yates, 57 F. 668 (E. D. N. Y., 1893) .. 13

Taylor v. Standard Gas and Electric Co., 306 U. S. 307, 59 Sup. Ct. 543 (1939) 12

The Donna Lane, 299 Fed. 977 (D. C. Wash. 1935) .. 14

The Great Canton, 299 Fed. 953 (E. D. N. Y., 1924).. 8

The Steel Trader, 275 U. S. 388, 48 Sup. Ct. 162 (1928) 6

Union Drawn Steel Co., 10 N. L. R. B. 868 (1938), enforced 109 F. (2d) 587 (C. C. A. 3d, 1940)..... 13

U. S. v. Tynen, 11 Wall. 88, 20 L. Ed. 153 8

U. S. v. Walter, 263 U. S. 15, 44 Sup. Ct. 10 (1923) .. 12

OTHER AUTHORITIES CITED.

Marawetz, Private Corporations, 2d Ed., Sec. 1 12

Moody's Industrial, 1941 10

Stevens on Corporations (1936) pp. 16-18 12

STATUTES CITED.

Title 22, U. S. Code, Sec. 245j-l, sub. (k) 3

Revised Statutes:

Section 4527 (46 U. S. Code, 594) 3, 4, 5, 6, 7, 8, 10, 14, 15, 16

Section 4582 (46 U. S. Code 684) 7, 8, 9, 10, 12

Section 4530 14

Supreme Court of the United States

STANDARD OIL COMPANY OF NEW JERSEY, Petitioner, *against* OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON, Respondents.	No. .....

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

Statement

The case was tried in the Municipal Court, and judgment was entered in favor of the respondents, amounting in all to the sum of $342.94 (R. 6). The Appellate Term affirmed (R. 91) and thereafter denied a motion made for leave to appeal further. An additional application was then made by petitioner to the Appellate Division, which consented to review the case (R. 93). On appeal to that Court however, the determination of the Municipal Court was again affirmed (R. 99).

A further motion was then made by petitioner for leave to appeal to the Court of Appeals, but said application was also denied (R. 98), and it subsequently filed a petition in this Honorable Court praying for a Writ of Certiorari.

Facts

Plaintiffs-respondents are all seamen, who signed on as members of the crew of an American-flag tanker, the "W. C. Teagle", in the port of New York, on or about October 17,

1939 (R. 31-2). The articles were signed before a Shipping Commissioner (R. 10), and called for a voyage on:

> "the S. S. 'W. C. Teagle' * * * now bound from the port of N. Y. to Cartagena, Colombia, Montreal, Canada, and such other ports and places in any other part of the world as the master may direct, and back to a final port of discharge in the United States, for a term not exceeding twelve calendar months" (Plaintiffs' Exhibit Number 1, R. 48).

As the master himself admitted, at the time the articles were signed it was undoubtedly within the contemplation of the parties that the "other ports and places in any part of the world as the master may direct" referred to waters adjacent to Europe, including the Mediterranean and Black Seas (R. 47). The articles themselves made provision for extra payment in the event the vessel would sail in those waters (Plaintiffs' Exhibit Number 1).

Conditions in the maritime industry were such, at the time, that a seaman, in order to obtain employment, had to enter his name on the hiring hall list, and his name was then generally reached only after a two month waiting period (R. 16).

At the time of signing on, none of the members of the crew was advised that, in fact, the owner of the vessel, the petitioner herein, had obtained approval from the U. S. Maritime Commission to transfer its vessel to Panamanian ownership and registry as early as September 29, 1939, i. e., about three weeks before the outset of the voyage. Nor were they advised that when the vessel would arrive at Canada, on November 13, 1939, i. e., less than a month after signing on, their voyage would end at Montreal, Canada, and that they would be discharged (R. 13).

Accordingly, after signing the shipping articles, the members of the crew entered into their respective duties and the vessel proceeded from New York to Cartagena, Colombia, and then to Montreal, Canada (R. 36).

In the meantime, on November 4, 1939, the Neutrality Act (which had been under discussion by Congress long prior to the commencement of the voyage) had finally been passed, prohibiting the undertaking by American vessels of new voyages bound for war zone areas, although expressly leaving unaffected by this new legislation voyages already begun prior to the passage of the Act (Section 245j-1, subdivision (k) of Title 22 of the United States Code).

At Montreal, Canada the crew was advised that the vessel had been "sold" and that there was a change of registry to the Panamanian flag (R. 12), and that for this reason their voyage was at an end (R. 36). The "sale" had been made to the Panama Transport Co. (R. 36), and, as petitioner's Assistant Manager of Marine Operations admitted, the Panama Transport Co. is a subsidiary of petitioner, Standard Oil Company of New Jersey (R. 68-69).

Although the members of the crew protested against this discharge, some being actually taken off the vessel by force (R. 45), they were transported back to New York, where they arrived the next day, November 14, 1939, and were there paid the wages which they had earned (R. 14). It was conceded by the attorney for the steamship company, at the trial, that the seamen protested at the time of signing off (R. 29).

The Courts below held that the Neutrality Act, by its terms, had no application to any voyage entered into prior to the enactment of that law, and that, therefore, the seamen fell squarely within the provisions of Revised Statutes, Section 4527, in that subsequent to signing the shipping articles they were afterwards discharged:

(a) Before one month's wages were earned;

(b) Without fault on their part justifying their discharge; and

(c) Without their consent.

Therefore, they were entitled to an additional month's wages under the Statute.

In the points which follow, the undersigned will endeavor to show that the rulings in the Courts below was in all respects correct; that the points raised by Petitioner are without real merit, and that certiorari ought therefore not to be permitted.

A. A consideration of the nature of Section 4527 of the Revised Statutes (46 U. S. C. A. 594).

By a careful examination of Section 4527 of the Revised Statutes (46 U. S. C. A. 594 [text at pp. 1-2, *supra*]), we find that where, as here, seamen have signed shipping articles and are afterwards discharged:

(a) Before one month's wages are earned;

(b) Without fault on their part justifying such discharge; and

(c) Without their consent;

they are entitled to receive an extra month's wages. It is respectfullly submitted that in this case all of these requirements were met.

In enacting this section Congress had in mind the fact that seamen are often unemployed for great periods of time; that when they finally do get employment they must frequently leave the lodging houses in which they live, even though they may already have paid their rent for the entire week; and that the seamen must usually then go through the trouble of packing all their personal belongings to take them on board ship. When a seaman is, therefore, offered a berth aboard a vessel which contemplates a short voyage, he may, and often does, decide that the trouble and expense may not be worth the wages which could be earned on such short voyage—and he usually prefers to wait until an opportunity presents itself to work aboard a vessel offering longer employment.

Congress, therefore, provided by Section 4527 of the Revised Statutes that where a shipowner induces seaman to work aboard his ship, and represents that they are undertaking a foreign voyage to a specific port, he may not thereafter discharge them without their consent, and without any fault on their part, unless they had already earned one month's wages. In short, it is declared to be a policy that where a shipowner does violate this provision of law he is required to pay the wrongfully discharged seamen an additional month's wages in lieu of damages.

The payment of such an extra month's wages in cases where seamen are wrongfully discharged has thus, by law, become part of the operating expense of every shipowner.

In the case of *Arwine* v. *Alaska S. S. Co.,* 65 P. (2d) 695, 189 Wash. 437 (1937), the Court had occasion to consider the effect of Revised Statutes, Section 4527, in awarding the crew a month's wages. The Supreme Court of Washington, by Mr. Justice Robinson, stated, at page 696:

> "We think, however, that the statute does not provide a penalty, but merely fixes the seaman's measure of recovery when his contract of employment is breached without his fault. The language seems too clear and definite to admit of any other construction. In any event, it was so constructed in *The Steel Trader,* 275 U. S. 388, reported in 48 Sup. Ct. 162, 72 L. Ed. 326, under the *U. S. Steel Products Co.* v. *Adams,* and we are bound by that decision.
>
> "The statute under discussion is one of a number of Federal statutes giving seamen rather unusual rights and remedies with respect to wages. * * *
>
> "These wage statutes were enacted upon the theory that seamen needed special protetcion and they have been liberally construed in their favor for the same reason. In fact, at the time of their enactment, seamen were regarded as being in need of a kind of guardianship, because seamen are repeatedly spoken of in text books and law reviews as 'wards of the admiralty'. It is true that seamen have since acquired other and very efficient guardianship, particularly as

regards wages, but these statutes are still in effect and must be enforced according to their original intent."

The statute was also considered in *Calvin* v. *Huntley,* 178 Mass. 29, 59 N. E. 435 (1901). (This decision has been expressly approved and quoted from the United States Supreme Court in *The Steel Trader,* 275 U. S. 388, 48 Sup. Ct. 162 [1928].) In that case the Supreme Judicial Court of Massachusetts held that Revised Statutes, Section 4527 is not a penalty and that, therefore, an action to recover same may be commenced in the State Courts. The Court here also points out that the statute fixes one month's wages as damages for the owner's breach of contract, Hammond, *J.,* stating at page 435:

"It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public as such, may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seaman from loss rather than punish the master for discharging him. The remedy is given to the seaman alone and its plan, perhaps, is to furnish a plain, clear and well-drafted rule of damages as between him and the master, for a breach of contract in which the seaman and owner are the only persons interested.

* * * * * *

"Nor does the rule of damages seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere and that in all fairness he should recover more than the amount due him for wages earned."

B. Revised Statutes, Section 4527 (46 U. S. C. A. 594) and Revised Statutes, Section 4582 (46 U. S. C. A. 684) are not mutually exclusive, nor is the latter section applicable to this case.

Petitioner relies upon Revised Statutes, Section 4582 (46 U. S. C. A. 684), which compels a master to provide a seaman with passage home whenever a vessel of the United States is sold in a foreign country and her company is discharged there. That section reads as follows:

> "Wages on discharge in case of sale. Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate empoyment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding $50."

Petitioner claims that the section just quoted is applicable to this case and that, having allegedly complied with it, there is no further obligation on its part.

To begin with, there is no language in Revised Statutes, Section 4582 which states that compliance with that section relieves the master from any obligations which he may have under Revised Statutes, Section 4527, and it is important to bear that fact in mind.

The rule of construction applicable to this case, was stated by this court in *U. S. v. Tynen,* 11 Wall. 88, 92, 20 L. Ed. 153, as follows:

> "When there are two acts on the same subject, the rule is to give effect to both if possible."

However, aside from that fact, it is respectfully submitted that Revised Statutes, Section 4582, relied on by the steamship company, has no application whatever to this case, while, on the other hand, Revised Statutes, Section 4527, relied on by the seamen, does apply. Revised Statutes, Section 4582, has no applicability to the situation herein for the following reasons:

1. There was no discharge and pay-off in a foreign country before a consular official, as is required by the terms of that section.

In the instant case, while the crew's voyage was terminated at Montreal, Canada, the actual discharge and pay-off occurred when the seamen returned to New York. Since there was no discharge and pay-off before a consular official in Montreal, the section relied on by the defendant-appellant has no possible application to the situation herein.

That a discharge in a domestic port, as was the case herein, on a sale of a vessel, does not deprive the crew of extra wages under Revised Statutes, Section 4527, see *The Great Canton,* 299 F. 953 (E. D., N. Y., 1924). In that case not only was the crew given an extra month's wages under Revised Statutes, Section 4527, but, in addition, they were awarded the penalties provided by Revised Statutes, Section 4529, to wit, two days' pay for every day they were made to wait before receiving this extra month's wages.

2. Revised Statutes, Section 4582, which gives only return transportation on the sale of a vessel in a foreign port, has, since early times, been limited to these instances where the discharge in the foreign port was with the consent of the seamen, while here the discharge was without the consent of the seamen.

One of the earliest cases to arise under the section was *Pool* v. *Welsh,* Fed. Cas. No. 11269 (D. C., Pa., 1830). In that case an American crew was discharged in a foreign port with its consent, and the vessel was sold, the master having found the ship not sufficiently seaworthy for his purposes. The consul offered to send the crew back on another vessel, working their way, but the seamen refused the offer claiming to be entitled to extra wages under Revised Statutes, Section 4582, as it then existed. The Court pointed out that had this been a case of a discharge without the seamen's consent, they would have been entitled to wages, etc., to the end of the voyage, as damages, on the authority of Judge Story's decision in *Emerson* v. *Havland,* Fed. Cas. No. 441, but that since the discharge here was with their consent, they came within the section and were entitled to extra wages as provided therein.

See *Heynsohn* v. *Merriman,* 1 Fed. 728 (S. D., N. Y., 1880), where it was also pointed out that Revised Statutes, Section 4582 only applied to a case where a seaman was discharged in a foreign country with his consent, as distinguished from a discharge without the seaman's consent. In that case, Judge Choate stated, at page 729:

> "The defendant claims that the payment at Valparaiso works a satisfaction of the libellant's claim for wages under Rev. St. Section 4582. But I do not perceive that that section has any bearing on the case. By it a master is required, on discharging a seaman who is a citizen of the United States with his own consent, in a foreign country, to produce to the consul the wages due, and three months' extra wages. That is

> if the defendant had, with the consent of the libellant, discharged him at Buenos Aires, he must have paid to the consul there the wages due up to that time and three months' extra wages, and this would have released him and the vessel from further liability under the contract.
>
> "* * * But there is no pretense that the libellant was discharged with his own consent, and therefore the statute can have no possible application to effect the release of the vessel or the master."

Since the seamen here were discharged and paid off in a domestic port without their consent, the only section which applied was Revised Statutes, Section 4527 and not Revised Statutes, Section 4582.

3. There was no bona fide sale within the meaning of Revised Statutes, Section 4582.

Revised Statutes, Section 4582 was obviously intended to give a seaman return transportation where his employer ceased to own the vessel due to a bona fide sale and discharge in a foreign country. Can it be said that the transfer of the "W. C. Teagle" by the Standard Oil Company of New Jersey to its subsidiary, for the purpose of avoiding the provisions of the Neutrality Act, constitutes a bona fide sale?

An examination of Moody's Industrial, 1941, under the heading "Standard Oil Company" discloses that at pages 2904-2905 it is stated that the Standard Oil Company of New Jersey owns 100% voting control of the "Panama Transport Co.—tankers", one of the many companies listed as those in whom the defendant-appellant has such control. At page 2906 of that work the following also appears under the same general heading of "Standard Oil Company":

> "Marine Transportation Department—
>
> "The tanker fleet at the end of 1939 comprised 205 vessels totalling 2,186,530 tons (approximately 13% of

the tanker tonnage afloat). The volume of oil handled by the company's own and its chartered ocean-going vessels during 1938 total 260,000,000 barrels.

"A break-down of the consolidated subsidiaries' ocean, coastal and lake tankers as to countries of registry on December 31, 1937, is as follows (In 1939, certain older tankers were transferred to foreign registry[1]):

Flag	Tankers	Deadweight Tons
Dutch	3	36,540
Belgian	2	28,425
Danish	4	44,335
Norwegian	2	15,690
Panamanian	28	422,020
German	4	61,190
French	5	32,165
Italian	6	51,320
Venezuelan	7	35,942
Argentine	5	13,955
United States	69	916,784
British	65	447,499
		2,105,865

"Ownership of the above vessels was distributed among a number of subsidiaries. U. S. flag tankers were owned by Standard Oil Co. of New Jersey. Panama flag tankers were owned by Panama Transport Co. British flag tankers were owned: 20 by Imperial Oil Shipping Co., Ltd., 23 by Lago Shipping Co., Ltd., 6 by the British-Mexican Petroleum Co., Ltd., and 1 by International Petroleum Co., Ltd."

Moody's Industrial also shows that aside from the Panama Transport Co., the petitioner also has voting control in the other companies mentioned as those who nominally own its foreign flag tankers.

It is respectfully submitted that where, as here, a gigantic corporation, such as petitioner herein, uses smaller

[1] One of these transfers was that of the "W. C. Teagle", in the instant case, to Panamanian registry.

corporate structures as mere pawns, retaining absolute control over them and reaping all the profits of their transactions, and where such dominating corporation goes through the mechanics of transferring an asset to the subsidiary, under circumstances as existed herein, and without any showing or proof of consideration, that such a transfer does not constitute a bona fide sale within the meaning of Revised Statutes, Section 4582.

Text-book writers and cases have recently tended to recognize the piercing of the corporate veil as between parent and subsidiary corporations in circumstances such as appear herein.

> *Stevens on Corporations* (1936), pp. 16-18;
> *Maraweetz, Private Corporations,* 2d Ed., Sec. 1;
> *U. S.* v. *Walter,* 263 U. S. 15, 44 Sup. Ct. 10 (1923);
> *Taylor* v. *Standard Gas and Electric Co.,* 306 U. S. 307, 59 Sup. Ct. 543 (1939);
> *N. L. R. B.* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 57 Sup. Ct. 615 (1937);
> *N. L. R. B.* v. *Hearst, et al.,* 102 F. (2d) 658 (C. C. A. 9th, 1939).

While we realize that decisions of the National Labor Relations Board are not binding on this Honorable Court, nevertheless it may, perhaps, not be amiss to point out, that in construing employer-employee relationships, the Board, in *Maryland Distilling, Inc.,* 3 N. L. R. B. 176 (1937), plainly stated its disregard for the corporate entity as follows:

> "The resort to the corporate fiction of the holding company device, does not hide the real picture presented by the respondents and their business, namely, that of a single enterprise with unitary control doing business of national, indeed of international, scope and ramifications" (p. 182).

See also:

Union Drawn Steel Co., 10 N. L. R. B. 868 (1938), enforced 109 F. (2d) 587 (C. C. A. 3d, 1940).

We have thus seen that the two sections in question are not inconsistent, and that Revised Statutes, Section 4582 does not apply to this case because (1) there was no discharge and pay-off in a foreign country before a consular official, (2) the discharge was not with the consent of the seamen, and (3) after the change of registry the true owner of the vessel was still the Standard Oil Company of New Jersey, i. e., there was no bona fide sale.

C. Transporting the men back to New York by rail or bus was not a performance of the contract of employment.

In the instant case, the members of the crew of the "W. C. Teagle" were only given the wages which they had earned and were sent back to New York, where they arrived the following day. They were thus not compensated in any way for the damages which they sustained, for, as we have seen, under the contract, the vessel was bound to engage in a voyage from New York to Cartagena, Columbia, then to Montreal, Canada, "and such other ports and places in any part of the world as the master may direct and back to a final port of discharge in the United States. * * *"

By the express terms of the shipping articles the men were to be given work and the opportunity to earn wages on board the vessel until it reached its final port of discharge in the United States, after making the voyage contemplated. By "final port of discharge in the United States" is not meant a place where the seamen are discharged, but, rather, a place where the cargo is discharged.

The meaning of "final port of discharge in the United States" is defined in *Schermacher* v. *Yates*, 57 F. 668

(D. C., E. D., N. Y., 1893), where District Judge Benedict states, at page 669:

> "By the terms of the articles, the crew could only be discharged at 'a final port of discharge in the United States.' These words are to be construed in view of the language employed in Section 4530 of the Revised Statutes, where it is provided that a seamen is entitled to his wages 'as soon as the voyage is ended and the cargo and ballast fully discharged at the last port of delivery.' So construed, the last port of delivery where either cargo or ballast was discharged, if within the United States, would be a final port of discharge within the meaning of the articles signed by the libellants."

Here, the "W. C. Teagle" did not return to the United States with its crew and discharge cargo, but, instead, a new crew was engaged at Canada and then it proceeded on its way. Therefore, there undoubtedly was a clear breach of the provisions of the contract, entitling the respondents to damages—and those damages are fixed by statute at one month's wages, as shown above.[2]

Petitioner relies upon one case to prove that it was sufficient that the seamen were returned to the United States without more. That case, *Johnson* v. *Standard Oil Co. of N. J.*, 1940 A. M. C. 1145 (D. C. Maryland), is easily distinguishable by reason of the fact that the extra month's wages sought there under Revised Statutes, Section 4527, was disallowed for the sole reason that there the seamen had undertaken a coastwise voyage, the setcion only applying to foreign voyages by the express provisions of the

---

[2] That in the past, seamen wrongfully discharged, have not been limited merely to the one month's extra wages, which must be paid under Revised Statutes, Section 4527, we can point to at least two cases. In the first of these, *Hill v. Sachen*, 59 Fed. 790 (S. D., N. Y., 1894), seamen wrongfully discharged were awarded transportation in addition to the statutory extra month's wages. In the second case, *The Donna Lane* (D. C., Wash., 1924), 299 Fed. 977, seamen wrongfully discharged were also awarded one month's extra wages, together with transportation back to the port of shipment, District Judge Cushman stating, at page 982:

> "It does not follow because Congress has made this provision for a month's extra wages, the seaman is entitled to nothing more than a month's wages when mistakenly discharged by a consul at the instance of the master."

Shipping Commissioner's Act. Since the statute did not apply, it was incumbent on the crew to prove the extent of monetary damage it had sustained, which was not done. Transportation, wages and maintenance to a final port of discharge in the United States could not be awarded by the Court there as an item of damage, since those items had already been furnished to those seamen on the trip back. Since the statute was not applicable, and since there was no proof of damage, the Court could not make any award in favor of the crew. The statement of that Court to the effect that there had been no breach, must be considered in the light of the facts of that case. Actually there can be no doubt but that the failure of the vessel to complete its voyage by returning to the United States, does in fact constitute a breach of contract.

Petitioner urges that the contract was not breached but was fulfilled by merely providing transportation back to New York. However, it is clear from a reading of the articles of employment, that the contract could only have been fulfilled by the seamen completing their employment on board their vessel, and by the vessel completing the voyage that it had undertaken, by returning with its cargo to a port of final discharge in the United States.

In the case at bar there was no need to prove damages because once the breach is established, where a foreign voyage is involved, Revised Statutes, Section 4527 sets the measure of recovery as one month's extra wages; and that would have been the recovery regardless of whether the seamen were deprived, by the breach, of a voyage which normally would have taken six months, or a voyage which would have taken merely another half a day.

Merely giving the seamen wages for the extra day, until they reached New York, did not compensate them for the damage which they sustained by reason of the loss of the longer voyage, and did not comply with the requirements of Revised Statutes, Section 4527, which places upon the ship-owner, as an additional operating expense, the duty of paying its seamen an additional month's wages for wrongful discharge.

D. Conclusion.

The trial Court's ruling in favor of the seamen meant that it was satisfied that the respondents were discharged before one month's wages were earned, without fault on their part justifying such discharge, and without their consent. Therefore, pursuant to the express provisions of Section 4527 of the Revised Statutes, each member of the crew became entitled to receive one month's wages (in addition to the wages which he had earned, and which were paid to him).

From early times Congress has adopted a protective attitude toward seamen. Legislation enacted with reference to their service on board vessels, was intended for their protection and for the enlargement of their rights. It would, therefore, be in contravention to the policy of the law, as it has been throughout the ages, to now hold that a master may engage a crew in New York, under articles which clearly showed that a long foreign voyage was contemplated (thereby inducing the men to pack their belongings, give up their lodgings and their places on the hiring hall list), and then discharge the crew about three weeks later, in violation of the express provisions of the contract of employment.

Since the discharge herein, therefore, was before a month's wages had been earned, without any fault on the part of the crew, and in contravention of the articles, it falls squarely within the provisions of the revised statutes, Section 4527, and, therefore, there being no valid defense, review by certiorari should not be allowed.

Respectfully submitted,

WILLIAM L. STANDARD,
Counsel for Respondents.

LOUIS H. RUBINSTEIN,
of Counsel.